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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,201	07/22/2005	Nick Buckley	P08400US00/MP	8636
881 7590 07/28/2008 STITES & HARBISON PLLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314			EXAMINER BUL, LUAN KIM	
			ART UNIT 3728	PAPER NUMBER
			MAIL DATE 07/28/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/511,201

Applicant(s)

BUCKLEY, NICK

Examiner

Luan K. Bui

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-39 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-3 and 5-39 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

Specification

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of 37 CFR 1.71(a)-(c):

- (a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.
- (b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.
- (c) In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

2. The specification is objected to under 37 CFR 1.71, as the specification, as originally filed, does not provide support for the new matter as now claimed. The specification as filed does not provide support for “portions being adapted to match the shape of the eggs”, “said portions matching the shape of the eggs” and “the shape is formed as portions of a three-dimensional object defined by a two-dimensional object being rotated about an axis of revolution substantially normal to said top surface of the cover part” as in claim 1, “the portions adapted to match the shape of the eggs” as in claim 3, “three-dimensional object defined by a two-dimensional object being rotated about” as in claim 6, “matching” as in claim 7, “match the eggs” as in claim 10 and “match the shape of the eggs” as in claim 37. The instant specification only provides support for portions (8) reflecting the shape of the eggs.

3. Claims 1-39 are finally rejected under 35 USC 112, first paragraph, for the reasons set forth in the objection to the specification.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

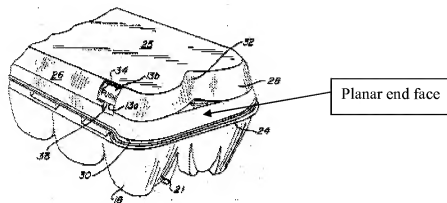
5. Claims 1-39 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrases “said portions matching the shape of the eggs contained within the unit” as in claim 1 and “the portions adapted to match the shape of the eggs contained in the unit” as in claim 3 are vague, confusion and indefinite because these phrases have no clear meaning since eggs are not claimed in combination with the packaging unit. The phrases “the shape is formed as portions of a three-dimensional object defined by a two-dimensional object being rotated about... part” in claim 1 and “a three-dimensional object defined by a two-dimensional object being rotated about ...” in claim 6 are vague and indefinite because these phrases have no clear meaning and the phrase “wherein the shape is formed ...” is directed to the shape of the eggs not the portions.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 5, 6, 8, 9, 23 and 24 are finally rejected under 35 U.S.C. 102(b) as anticipated by Misdom, Jr. et al. (3,813,027; hereinafter Misdom'027) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Misdom, Jr. et al. (3,813,027; hereinafter Misdom'027). To the extent that the Examiner can determine the scope of the claims, Misdom'027 discloses a display and distribution packaging unit (10) for eggs comprising a bottom part (11) having nonplanar side surfaces of compartments (14) and a cover part (12) having a top surface (25), substantially planar front and rear side surfaces (26, 27, Figure 3) and substantially planar opposing end faces. The cover part further including portions (28) being adapted to match shape of the eggs contained within the unit and the portions being located on at least one of the planar end faces. To the extent that applicant disagrees that the portions being adapted to match the shape of the eggs, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the portions of Misdom'027 so the portions being adapted to match the shape of the eggs for better securing the eggs within the unit and because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. In re Dailey et al., 149 USPQ 47.



8. Claims 1-3, 5, 6, 8, 9, 6-19, 24, 32 and 33 are finally rejected under 35 U.S.C. 102(b) as anticipated by Hartmann (3,259,294) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hartmann (3,259,294). To the extent that the Examiner can determine the scope of the claims, Hartmann discloses a display and distribution packaging unit for eggs comprising a bottom part (10) having nonplanar side surfaces of compartments (20) and a cover part (12) having a top surface (24), substantially planar front and rear side surfaces (Figure 1) and substantially planar opposing end faces. The cover part further including portions (22) being adapted to match shape of the eggs contained within the unit and the portions being located on at least one of the planar end faces. To the extent that applicant disagrees that the portions being adapted to match the shape of the eggs, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the portions of Hartmann so the portions being adapted to match the shape of the eggs for better securing the eggs within the unit and because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. In re Dailey et al., 149 USPQ 47.

9. Claims 1-3, 5-9, 16-24 and 29-39 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Misdom, Jr. et al. (3,813,027; hereinafter Misdom'027) or Hartmann (3,259,294) in view of Bixler (3,362,605). Misdom'027 or Hartmann discloses the unit as above having all the limitations of the claims. To the extent that Misdom'027 or Hartmann fails to show the portions being located on substantially planar end faces, Bixler teaches a display and distribution packaging unit (10) for eggs comprising a bottom part (12) having non-planar side surfaces of compartments (24) and a cover part (14) having a top surface (40, 40'), substantially planar front and rear surfaces (42, 42' and Figure 1) and portions (46, 46') matching the shape of the eggs contained within the unit and the portions located on substantially planar surfaces (42, 42') of the cover part for better securing the eggs within the unit and to prevent the eggs from moving during shipping and/or handling. It would have been obvious to one having ordinary skill in the art at the time the invention was made in view of Bixler to modify the unit of Misdom'027 or Hartmann so the portions are located on substantially planar end faces for decorative purposes and for better securing the eggs within the unit and to prevent the eggs from moving during shipping and/or handling. To the extent that applicant disagrees that the portions of Misdom'027 or Hartmann being adapted to match the shape of the eggs, it would have been obvious to one having ordinary skill in the art at the time the invention was made in view of Bixler to modify the portions of Misdom'027 or Hartmann so the portions being adapted to match the shape of the eggs for better securing the eggs within the unit and because a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. In re Dailey et al., 149 USPQ 47.

10. Claims 10-15 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of The French Patent No. FR2731986 to Menu (hereinafter Menu'986). Misdom'027 or Hartmann fails to show the portions comprise a surface structure being relatively smooth and the surface structure of the remaining surfaces of the unit being relatively coarse.

Menu'986 shows that it is old and conventional to provide a lid with the peripheral part of the lid's surface can be embossed/coarse and the central part of the lid's surface is not embossed/smooth. It would have been obvious to one having ordinary skill in the art in view of Menu'986 to modify the lid of Misdom'027 or Hartmann so the surface structure of the portions is constructed with relatively smooth and the remaining surface structure of the lid is relatively coarse for decorative purposes.

11. Claims 25 and 26 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of The French Publication No. 2.133.279 to Vauchier. Misdom'027 or Hartmann fails to show the interface between the cover part and the bottom part being inclined downwardly from the rear side of the packaging unit to the front side.

Vauchier shows a container comprising an interface between a cover part (11) and a bottom part (12) inclined downwardly from the rear side of the container to the front side (Figures 1-3). It would have been obvious to one having ordinary skill in the art in view of Vauchier to modify the packaging unit of Misdom'027 or Hartmann so the interface between the cover part and the

bottom part inclined downwardly from the rear side of the packaging unit to the front side for better displaying the eggs and to facilitate removing the eggs from the packaging unit.

12. Claims 27 and 28 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Seest et al. (3,471,078; hereinafter Seest'078). Misdom'027 or Hartmann fails to show the lower edge of the front surface of the cover part being curved in a downward direction beneath the interfaced between the cover part and the bottom part.

Seest'078 shows a packaging unit comprising a cover part (12) having a front surface with a lower edge (36) curved in a downward direction beneath the interface (32, 38) between the cover part and a bottom part (10) to facilitate opening the unit. It would have been obvious to one having ordinary skill in the art in view of Seest'078 to modify the packaging unit of Misdom'027 or Hartmann so the lower edge of the front surface curved in a downward direction beneath the interface between the cover part and the bottom part to facilitate opening the unit.

Response to Arguments

Applicant's arguments filed on 5/27/2008 have been fully considered but they are not deemed to be persuasive.

Applicant indicates that claim 1 as amended includes the subject matter of claim 4 is noted. This is not correct because the amended claim 1 is not the combination of claims 1 and 4

as originally filed for the reasons as set forth in the sections of 35 U.S.C. 112, first and second paragraphs above.

Applicant's argument with respect to the shape shown in Figure 5 of the present invention and the prior art packages is noted. This is not persuasive because the shape of the package of Misdorn'027 or Hartmann or Bixler also shows part of an egg.

Applicant's arguments with respect to Bixler on page 2 of the remarks are noted. They are not persuasive because Bixler is relied upon for nothing more than the portions (46, 46') matching the shape of the eggs contained within the unit and the portions located on substantially planar surfaces (42, 42') of the cover part.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

lkb
July 29, 2008

/Luan K. Bui/
Primary Examiner
Art Unit 3728